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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM WADSWORTH WILLIAMS,

Defendant and Appellant.

C086383

(Super. Ct. No. 97F4644)

Following a court trial on December 28, 2017, the trial court renewed appellant William Wadsworth Williams's mentally disordered offender (MDO) status for an additional year. (Pen. Code, §§ 2972, 2972.1.)¹ Williams appeals, arguing the renewal of this status is not supported by substantial evidence, and trial counsel's failure to move for a directed verdict at the close of the People's recommitment case rendered his counsel's representation ineffective.

We affirm the trial court's order of commitment.

¹ Undesignated statutory references are to the Penal Code.

BACKGROUND

Williams has a history of bipolar II disorder and pedophilia dating back to his 20s. He pleaded guilty to continuous sexual abuse of a child under the age of 14 (§ 288.5, subd. (a)) in 1997 and was sentenced to 12 years in prison for the sexual abuse of two stepdaughters, which occurred between 1991 and 1993. In 2003 Williams was involuntarily committed as an MDO. He was first granted outpatient treatment in 2011, but was returned to inpatient status in 2012 for multiple program rule violations, including possession of pornographic material. He was again granted outpatient treatment under the conditional release program (CONREP) in November of 2017. On November 28, 2017, the People moved to extend his outpatient MDO commitment for another year. Williams waived his right to a jury trial, and a court trial was held on December 28, 2017.

The People presented the testimony of Williams's individual therapist from CONREP, Ramiro Carrillo. Carrillo was employed by CONREP as a "forensic mental health specialist" starting in March 2017 for which he had received training from the program's director and another individual. Carrillo had a master's degree in marriage and family therapy, but had not yet received a license in that field. At CONREP, he provided individual and group therapy, as well as forensic services to Williams and other clients. He had never testified as an expert before, and the People never formally moved to designate Carrillo as an expert.

Carrillo evaluated Williams on a weekly basis to measure his risk to himself and the community. He also conducted quarterly and annual reports. Carrillo opined Williams suffered from both pedophilia (based upon the conduct with his stepdaughters) and bipolar II disorder. Carrillo did not believe the pedophilia was in remission because of Williams's previous rule violations, including possession of a magazine with young women when he was in the hospital and possession of pornographic magazines and a

video with young individuals when he was previously released on CONREP. The violations concerning sexual material occurred between 2006 and 2012.

Further, Williams had struggled in the past year to comply with his terms and conditions, including his failure to register as a sex offender on his birthday, doing so about a month late. He also violated program rules concerning the possession of electronics and money. Williams was further noncompliant in his participation in the moral reconnection treatment group, which was intended to teach him how to be prosocial in the community and comply with directives from authority figures. This noncompliance was seen in his being “[a]rgumentative, refusing to complete tasks, defiant . . . [and] divert[ing] the group’s attention to something that was not the topic of discussion.” Williams was also noncompliant in individual therapy. This noncompliance concerned Carrillo because “if he can’t comply with an outpatient program that’s supervising him almost every single day, if left to his own devices, Mr. Williams will not be compliant with any community laws.” This noncompliance dominated Williams’s individual sessions to the exclusion of addressing the pedophilia.

Carrillo opined the bipolar II disorder was not in remission because Williams continued to struggle with intense emotions, including “episodes of irritability, through episodes of depression, intense crying, [and] irregular emotions.”

Taken together, Carrillo testified that the pedophilia and bipolar II disorder heightened Williams’s risk to the community because the lack of impulse control made it more likely he would reoffend. Carrillo opined that Williams’s pedophilia and bipolar II made him a danger to others in the community. He stated: “[W]e believe -- it’s not only myself, but the entire conditional release team believes -- that if left to his own devices, Mr. Williams will reoffend again.” He based this opinion on Williams’s manipulative behavior, previous failure on conditional release, and current failure to comply with the rules, regulations and laws in a supervised environment, as well as his noncompliance in individual and group therapy. He also found Williams’s recent behavior in his annual

assessment, wherein he minimized his molestation by describing it as “tickling,” extremely troubling because it could lead to reoffending.

Williams testified on his own behalf that he was classified as an MDO in 2003 and remained in inpatient treatment until March 2011 when he was conditionally released, but he was later recommitted to the state hospital. Williams admitted to failing to register as a sex offender on his birthday because his friend was dying. He also provided explanations for at least one of his rule violations concerning an illicit trade of a DVD player that he was not supposed to have. Williams had prepared a wellness maintenance plan in preparation for the court hearing on his recommitment.

The court heard the arguments of counsel and then determined that Williams would be recommitted for another year, finding: “I think you understand that you have many, many rules and obligations under this particular program. I think you have seen today how even minor infractions can add up to be something that is more. [¶] The Court finds that there are not only minor infractions, but certainly ones that are more than minor, specifically the failure to register. And so what I’m saying, Mr. Williams, is that simply, I just don’t want you to take this as something that you should give up. I think you have a decent amount of insight with regard to one of your mental health disorders, that being pedophilia. [¶] I think you have gains to make with regard to your insight as to the bipolar condition and its relationship to that, specifically as to its relationship to your mood, decision-making, and social skills. For those reasons, the Court finds beyond a reasonable doubt that the respondent has a severe mental disorder. The respondent’s severe mental disorder is not in remission without treatment. And by reason of the severe mental disorder, the respondent represents a substantial danger of physical harm to others. For those reasons, the People’s petition under Penal Code section 2970 is deemed to be true and is granted.”

DISCUSSION

A. *Substantial Evidence Supports the Trial Court's Order*

Williams argues the government failed to prove that he remained an MDO because the government's witness was not a qualified expert, and thus, his testimony was entitled to negligible weight rendering the trial court's findings without substantial evidence supporting them. We disagree.

“The Mentally Disordered Offender Act (MDO Act), enacted in 1985, requires that offenders who have been convicted of violent crimes related to their mental disorders, and who continue to pose a danger to society, receive mental health treatment during and after the termination of their parole until their mental disorder can be kept in remission. (Pen. Code, § 2960 et seq.) Although the nature of an offender's past criminal conduct is one of the criteria for treatment as a mentally disordered offender (MDO), the MDO Act itself is not punitive or penal in nature. [Citation.] Rather, the purpose of the scheme is to provide MDO's with treatment while at the same time protecting the general public from the danger to society posed by an offender with a mental disorder. (Pen. Code, § 2960.)” (*In re Qawi* (2004) 32 Cal.4th 1, 9.)²

“ ‘The MDO Act establishes a comprehensive scheme for treating prisoners who have severe mental disorders that were a cause or aggravating factor in the commission of the crime for which they were imprisoned. (See § 2960.) The act addresses treatment in three contexts—first, as a condition of parole (§ 2962); then, as continued treatment for one year upon termination of parole (§ 2970); and finally, as an additional year of treatment after expiration of the original, or previous, one-year commitment (§ 2972).’ [Citation.]” (*People v. Cobb* (2010) 48 Cal.4th 243, 251 (*Cobb*).) “Commitment as an

² The Mentally Disordered Offender Act was amended in 2019 to ameliorate certain stigmatizing language, but these changes do not impact our analysis. (Stats. 2019, ch. 9, §§ 6-13.)

MDO is not indefinite; instead, ‘[a]n MDO is committed for . . . one-year period[s] and thereafter has the right to be released unless the People prove beyond a reasonable doubt that he or she should be recommitted for another year.’ ” (*Lopez v. Superior Court* (2010) 50 Cal.4th 1055, 1063, disapproved on other grounds in *People v. Harrison* (2013) 57 Cal.4th 1211, 1230.)

Section 2972.1 defines procedures for recommitment of MDO patients with “outpatient status.” Section 2972.1, subdivision (e) requires the trier of fact “determine whether or not the requirements of subdivisions (c) and (d) of Section 2972 have been met.” (§ 2972.1, subd. (e).) Williams does not challenge compliance with section 2972, subdivision (d), and so we limit out analysis to subdivision (c).

Section 2972, subdivision (c), in turn, requires a determination of three questions: “Does the defendant continue to have a severe mental disorder? Is the disorder in remission? Does the defendant continue to represent a substantial danger of physical harm to others?” (*Cobb, supra*, 48 Cal.4th at p. 252 [citing § 2972, subd. (c)].) “A defendant’s condition a year earlier is relevant but not dispositive of these questions.” (*Cobb*, at p. 252.) Based upon the answers to the foregoing questions, the court thereafter determines whether the MDO patient should be discharged, confined to a treatment facility, or reapproved for outpatient status. (§ 2972.1, subds. (a), (e).)

“In considering the sufficiency of the evidence to support MDO findings, an appellate court must determine whether, on the whole record, a rational trier of fact could have found that defendant is an MDO beyond a reasonable doubt, considering all the evidence in the light which is most favorable to the People, and drawing all inferences the trier could reasonably have made to support the finding. [Citation.] ‘ “ ‘Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the [finding] is supported by substantial evidence, we must accord due deference to the

trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. . . . ' [Citation.]' ' [Citations.]' (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082-1083.)

At the outset, we note Williams's forfeiture of his appellate challenge to both (1) the qualifications of the People's witness, Carrillo, and (2) that Carrillo impermissibly relied upon hearsay, as Williams failed to object to that testimony below. (*People v. Nelson* (2012) 209 Cal.App.4th 698, 711 [citing *People v. Doolin* (2009) 45 Cal.4th 390, 434 for proposition that "failure to raise a specific objection to the admission of evidence results in forfeiture of appellate review"].) Thus, Williams's argument that there was *no* evidence that he suffered from pedophilia or bipolar II disorder fails. Carrillo, who was Williams's therapist and primary treatment provider at the CONREP program, testified that Williams suffered from both pedophilia and bipolar II disorder. The court admitted this testimony without objection, and as the fact finder, it was that court's job to make its own judgment concerning Carrillo's credibility. (*People v. Ward* (1999) 71 Cal.App.4th 368, 374-375 [rejecting challenge based on criticism of experts' qualifications and methodology].) Therefore, substantial evidence supports the trial court's finding that Williams suffered from a severe mental illness.³

We further reject Williams's arguments that substantial evidence did not support the trial court's remission and dangerousness findings. As a preliminary matter, we note Williams's failure to define the standards to be employed or demonstrate trial court error in these determinations through citation to reasoned authority in his opening brief have forfeited these arguments. (See *Okasaki v. City of Elk Grove* (2012) 203 Cal.App.4th 1043, 1045, fn. 1.) We also find them meritless.

³ Williams does not challenge that either pedophilia or bipolar II disorder would qualify as a "severe mental illness" under section 2962, subdivision (a)(2).

Section 2962 explains in pertinent part that: “A person ‘cannot be kept in remission without treatment’ if during the year prior to the question being before the Board of Parole Hearings or a trial court, the person has been in remission and . . . has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard is whether the person has acted as a reasonable person would in following the treatment plan.” (§ 2962, subd. (a)(3).)

Here, substantial evidence supports the trial court’s finding that Williams could not be kept in remission without treatment because he failed to follow the treatment plan by failing to register as a sex offender on his birthday, as well as being noncompliant in group and individual therapy. (*People v. Beeson* (2002) 99 Cal.App.4th 1393, 1399.) “A reasonable person, whose mental disorder can be kept in remission with treatment, must, at minimum, acknowledge if possible the seriousness of his mental illness and *cooperate* in all the mandatory components of his treatment plan.” (*Id.* at p. 1399, italics added.) Here, Williams failed to cooperate through his disruptive and argumentative behavior in group and individual therapy, as well as in his failure to comply with section 290 registration requirements.

We further find substantial evidence supports the trial court’s finding on Williams’s dangerousness to the community. Section 2972, subdivision (c) required the trial court determine whether Williams “represent[ed] a substantial danger of physical harm to others” (*Ibid.*; see also *Cobb, supra*, 48 Cal.4th at p. 252.) Carrillo testified that he believed Williams would reoffend if left unsupervised because of his manipulative behavior, previous failure on conditional release, and current failure to comply with the rules, regulations and laws in a supervised environment, as well as his noncompliance in individual and group therapy. Williams’s minimizing of his sexual molestation as “tickling” within his annual assessment occurring two months before the court trial further supports Carrillo’s opinion, and the trial court’s ultimate finding that Williams

“represent[ed] a substantial danger of physical harm to others.” Finally, failing to register as a sex offender also supports the dangerousness finding.⁴

B. Ineffective Assistance of Counsel

We likewise reject Williams’s argument that his counsel was ineffective for failing to bring a motion at the close of the People’s recommitment case seeking the equivalent of a directed verdict.

As explained in *People v. Williams* (1999) 77 Cal.App.4th 436, 461: “To prevail on a claim of ineffective assistance of counsel, defendant ‘must establish not only deficient performance, i.e., representation below an objective standard of reasonableness, but also resultant prejudice. [Citation.] Tactical errors are generally not deemed reversible, and counsel’s decisionmaking must be evaluated in the context of the available facts. [Citation.] To the extent the record on appeal fails to disclose why counsel acted or failed to act in the manner challenged, we will affirm the judgment ‘unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation’ [Citation.] Finally, prejudice must be affirmatively proved; the record must demonstrate ‘a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.’ [Citations.]’ [Citations.]”

As in *People v. Williams, supra*, 77 Cal.App.4th at pages 461-462, we see nothing in the record explaining why Williams’s counsel did not make the suggested motion nor does Williams establish affirmatively lack of good cause for failing to seek such a motion. Moreover, while Williams now looks with disdain on Carrillo’s testimony, he

⁴ We acknowledge Williams’s previous compliance with registration requirements after moving during the previous year, but highlight that this does not *eliminate* the danger posed by his registering a month late for his birthday.

